IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FIRST APPEAL NO.765 OF 1992

The Collector,
Dadra and Nagar Haveli,
Silvasa. .. Appellant

Vs.

1. Pravinchandra Mohanlal Bhavsar
aged about 43, Occupation-
Agriculture and business,
R/o.Silvassa.

2. Sudhaben W/o.Ramchandra
Mohanlal Bhavsar,
aged about 42 years,
Occupation Household,
R/o.Silvassa. .. Respondents
(Org.Claimants)

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S/Shri R.M.Agarawal with G.R.Agarwal for the appellant.

Shri V.Z.Kankaria for respondent No.1.

Ms Anjali M.Desai for respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 22nd SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. The appellant-Collector of Dadra and Nagar Haveli, Silvasa, being aggrieved by the impugned

judgment and order passed by the District Judge, Dadra and Nagar Haveli, Silvasa, in Land Acquisition Case No.1 of 1988 dated 25th September, 1991 has filed this first appeal. The appeal was admitted, and after the respondents were served, the cross objections have been filed by the respondents.

FACTS:

2. Brief facts which are relevant for deciding the First Appeal are as under:-

. The appellant had acquired an area admeasuring 3.30 Hectares of land out of Survey No.126 of village Amli, Dadra and Nagar Haveli Administration, which was owned by the respondents/ original claimants for the purpose of construction of residential quarters for the staff of Electrical Department. The relevant dates regarding acquisition are as under:-

17/4/1985	Joint measurement of the land was taken.
25/11/1986	Notification under Section 4 of the Land Acquisition Act, 1894 was issued.
30/7/1987	Notification was challenged by the

claimants in the High Court and direction was given to the appellant to give hearing under Section 5-A. Accordingly, the hearing was given and after disposal of the writ petition, notification under Section 6 of the said Act was issued.

3/8/1987 Notice was issued under Section 9 of the said Act.

25/3/1988 Award was passed by the Land Acquisition Officer, who awarded compensation at the rate of Rs.17,500/- per Hectare and at Rs.1,000/- per mango tree, and calculated the total market value as Rs.76,075/-.

29/4/1988 Possession of the land was taken and on the same date, compensation was paid to the claimants.

Thereafter, Application under Section 18 of the said Act was filed and the amount of Rs.66,62,000/- was claimed by the claimants.

25/9/1991	The learned District Judge, Dadra and Nagar Haveli, Silvasa, passed the judgment and award and awarded compensation at the rate of Rs.1,25,000/- per acre to the claimants along with other components such as solatium at the rate of 30% on the market value, and interest under Section 23(1A) of the said Act.

The appellant is challenging the said award passed by the Reference Court.

3. The claimants examined three witnesses viz. (1) Shri Pravinchandra Mohanlal Bhavsar, who is original claimant, (2) Shri Chandrakant Mangaldas Parekh and (3) Chhotubhai Gajanand Patel, who had purchased the part of the land out of Survey No.126 prior to the acquisition. List of documents was filed by the claimants at Exhibit-10A, in which 11 documents were annexed to the said list. The appellant admitted the said documents which consisted of orders passed by the Collector granting permission for sale of certain portion of land on Survey No.126 and also the certified copies of the sale deeds.

SUBMISSIONS:

4. Learned counsel appearing on behalf of the appellant has submitted that the Reference Court has not taken into consideration the fact that the permission, in respect of sale of a part of land out of Survey No.126, was granted by the Collector at the rate of Rs.17,500/- per hectare. He further submitted that though reliance was placed on the sale deed by the Reference Court in respect of 8 Acres of land which was sold for an amount of Rs.10,00,000/-, the agreement for sale was executed on 22nd February, 1986 and the actual sale deed was executed in the year 1988. He submitted that no reliance can be placed on the agreement for sale, as, at that time, no title had been transferred in favour of the purchaser Shri Patel. He submitted that the Reference Court ought to have relied on the sale instance where the land was sold at the rate of Rs.17,500/- per hectare in the year 1983 which was in close proximity of the land from the date of notification under Section 4 of the said Act. He submitted that in respect of the sale instance dated 14th April, 1986, though the certified copy of the sale deed was brought on record and the said land was sold at the rate of Rs.2.60 lacs per

hectare, which was situated at a distance of 90 meters away from the land in question, no evidence had been adduced by the claimants to show that the said land was comparable to the land in question in respect of proximity of the land, and in respect of the other comparable features, such as, frontage and quality of land, the amenities which were available to both the lands and such other comparable factors will have to be taken into consideration.

5. Learned counsel appearing on behalf of the claimants, on the other hand, has submitted that the Reference Court had ignored the sale instance dated 14th April, 1986 which had been proved by bringing the certified copy of the sale instance on record and yet the Reference Court had discarded the said sale instance on the ground that the same had not been proved. Learned counsel further submitted that in view of Section 51A of the Land Acquisition Act, 1894, hereinafter called as "the said Act", it was not necessary to examine the vendor for the purpose of proving the sale deed and it was sufficient to produce the certified copy of the documents to prove the sale deed in view of the subsequent judgment of the Supreme Court. He invited our attention to the evidence of three witnesses who were examined by the claimants and

it was strenuously urged that there was a specific reference to the sale instance dated 14th April, 1986 in respect of Survey No.122/1 and that the claimants had stated that the said land was only at a distance of 90 meters from the land in question and it was sold on 14th April, 1986 at the rate of Rs.2.60 lacs per hectare. He submitted that the certified copy - Exhibit-17 of the sale deed conclusively proved that the said land had been sold at Rs.2.60 lacs per hectare which fact had not been disputed by the appellant herein. He further submitted that the claimants were entitled for enhanced claim of Rs.66,62,000/- with further interest. Learned counsel invited our attention to the similarity in respect of the land in question and the adjoining land in support of his submission. He further submitted that the interest on solatium had not been paid and was liable to pay interest on solatium. He submitted that in view of the judgment in **Sunder v. Union of India,** reported in AIR 2001 SC 3516. The claimants were entitled to claim interest on the market value of the property which comprised of the market value plus solatium. The amount of interest under Section 26 of the said Act can be calculated after dealing with the separate components mentioned in Section 23 of the said Act, such as, market value arrived at under

Section 23, interest calculated under Section 23(1A) and solatium at the rate of 30% per annum under sub-section (2) of Section 23 of the said Act.

FINDINGS AND CONCLUSION:

6. The claimants in the present case have examined Shri P.M.Bhavsar, as C.W.1 at Exhibit-21, Shri P.N.Patel as C.W.2 at Exhibit-26 and Shri C.G.Patel, as C.W.3 at Exhibit - 29. The State has examined one witness Shri Navnitlal Pranjivan Shah at Exhibit - 35. In this appeal, the claimants have relied on Exhibit-17 which is a sale instance dated 14th April, 1986 in respect of Survey No.122, Part-I, which was sold at the rate of Rs.2.60,000/- per hectare. The Reference Court has not taken into consideration the said sale deed on the ground that the said sale deed had not been proved and the vendor of the said land had not been examined. Reliance was placed on the two decisions, one is of Gujarat High Court (**Maharao Shri Madansinhji v. State of Gujarat, through Dy.Collector, Western Division, Nakhatrana, Kutch,** reported in AIR 1969 Guj. 270), and another is of our High Court (**State of Maharashtra & Anr. Nanabhai Rathod & Ors.,** reported in AIR 1989 Bombay 9). In view of the same, the findings of the

Reference Court will have to be set aside as the Supreme Court in the recent judgment in the case of **Land Acquisition Officer and Mandal Revenue Officer vs. V. Narasaiah,** reported in AIR 2001 SC 1117, has held that in view of Section 51A of the said Act, it is not necessary to examine the vendor of the property and it is sufficient to produce certified copy of the sale deed as evidence. In the present case, certified copy of the said sale deed had been produced by the claimants and the copy thereof was admitted by the State and as such the said sale instance had been duly proved. The findings of the Reference Court, therefore, on this point will have to be set aside. The claimants have placed reliance on the said sale deed for the purpose of enhancement of compensation. The first question which falls for our consideration is whether the claimants would be entitled to claim enhancement of compensation on the basis of the said sale deed. It is settled position in law that mere bringing of the certified copy of the sale instance on record is not sufficient for the purpose of claiming compensation at the rate at which the said land was sold by the vendor as the burden is on the claimants to bring on record through the evidence, either in the form of an expert witness or through the deposition of the claimants or any other adjoining owner, to prove

that the said sale instance in question, on which reliance is placed, is comparable with the land which is sought to be acquired. In the present case, none of the witnesses who have been examined on behalf of the claimants have stated or given any comparison between the said land which was sold at Rs.2.60 lacs per hectare and the land in question. C.W.1, owner of the land, Shri Pravinchandra Mohanlal Bhavsar in his evidence has clearly made a passing reference in respect of the said land by stating that Survey No.122/1 is an adjoining land to his land which was acquired and that the distance between these two lands is about 90 meters. Further he has stated in his evidence that on Survey No.122, the factories had been constructed and the said factories had already started functioning. CW 2 Chandrakant Mangaldas Parekh, who is a resident of Silvasa and who had purchased 8 acres of land out of the same survey No.122 from the original claimants at the rate of Rs.1.12 lakhs per acre, also in his evidence, in vague terms, has stated that the land Survey No.122/1 is about 200 meters away from the acquired land and it appertains the main road. Apart from this evidence, no other fact had been brought on record to show that the said land Survey No.122/1 was similar to the land of the claimants. In the absence of evidence of

comparability of the lands, reliance on the sale instance cannot be placed merely because the said sale instance is proximate in point of time from Section 4 notification. Thus, we are unable to accept the submission made by learned counsel appearing on behalf of the claimants. The Supreme Court in the case of **V.Hanumantha Reddy (Dead) by L.Rs., v. Land Acquisition Officer and Mandal R.Officer,** reported in AIR 2004 SC 1185, has held that merely because the land may have high potentialities or may be proximate to developed land, that by itself would not be a ground for placing reliance on the said land and for not deducting development charges for the said land.

7. So far as the submission made by learned counsel appearing for the appellant is concerned, in our view, it is not possible to accept the submission that merely because an agreement of sale was executed in respect of the sale instance of part of Survey No.126 since the agreement of sale was executed on 22nd February, 1986 that would not reflect the correct market rate which was prevailing at that time. The fact that the agreement for sale was executed has not been disputed by the appellant. It is also not in dispute that the rate which was mentioned in the said agreement of sale dated 22nd February, 1986 was

incorrect or false. After the execution of the agreement of sale dated 22nd February, 1986, the sale deed was executed in 1988 in respect of the said land for the same price which was agreed upon on 22nd February, 1986. Thus, merely because the sale deed was executed in 1988, that would not be a ground for discarding the said sale instance, as the parties had agreed by a written agreement to sell part of the same property for a price which was determined on the said date. Thus, in our view, the Reference Court erred in not relying on the said sale instance as it is proximate in point of time and also it is a part of same land which was acquired. Since the said sale instance is in respect of the same property, the question of comparability also does not arise. Thus, the submission made by learned counsel appearing on behalf of the appellant cannot be accepted.

8. However, in our view, the Reference Court has ignored a vital aspect while calculating the market value in respect of land which was to be acquired. It is an admitted position that the land which was acquired was an agricultural land and no permission for sale of the land was obtained by the claimants. Further, it has not been brought on record whether the amenities such as electricity, water or internal roads

had been provided to the land which was acquired. It is a settled position in law that in respect of undeveloped land, deductions have to be made taking into account the amount of expenditure which will be required to be incurred for the purpose of converting undeveloped land into a developed land and normal ratio of such deductions are from 10% to 51% depending on the condition of the land.

9. In the present case, it has come on record that the adjoining area has been sufficiently developed and this fact has not been disputed by the appellant. However, the fact remains that the land in question is a undeveloped land and therefore, the Reference Court ought to have taken into consideration the expenditure which was likely to be incurred on this land. Merely because a part of the land was sold in the same year through a private party at the rate of 1.25 lacs per hectare, that would not be sufficient to hold that the same rate would be granted to the claimants. Though the said price of Rs.1.25 lacs per hectare was offered by the purchaser in respect of a part of the land which was purchased for the purpose of setting up a residential housing society, that price cannot be considered as a price of the land as the various expenses had to be incurred for

development of the said land. Therefore, while considering the market value of the land which was sought to be acquired, various expenses which were likely to be incurred for the purpose of converting it into a developed land should have been deducted from the said price. In the facts and circumstances of the present case, in our view, the deductions of 30% therefore will have to be made from the said price of Rs.1.25,000/- per hectare and that would be the price of land which would be available to the claimants, which would come to 87,500/- per hectare.

10. So far as the interest on the said land is concerned, the Reference Court has wrongly awarded interest at the rate of 12% per annum from the date of award for a period of first year and thereafter at the rate of 15% per annum till the recovery of the said amount. In the present case, it is an admitted position that the possession was taken on 29th April, 1988 and the payment of compensation was made on the very same day. Therefore, the question of payment of interest under Section 34 of the said Act at the rate of 12% per annum from the date of award for the first year and thereafter at the rate of 15% per annum does not arise.

11. The Reference Court, however, has not awarded interest under Section 23(1A) after taking into consideration the market value as defined under Section 23 and as such has not awarded the interest after adding solatium at the rate of 30% to the market value. In a recent decision in the case of **Sunder's case (supra)**, the Supreme Court in paragraph 19 has observed as under:-

> "19. Section 26 does not say that the award would contain only the amounts granted under sub-section (1) of S.23. The special mention of that sub-section in S.26 is only for the purpose of directing that the grounds or reasons for awarding the amount under each of the clauses in the sub-section shall be specified in the award. It is unnecessary to mention any reason or ground in any award as to why the sums indicated in sub-section (1-A) and sub-section (2) of S.23 of the Act were granted, because they are only the sequels or concomitant adjuncts of the determination of the total amount indicated in sub-section (1). no judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or sub-section (2) because the section itself

> specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise S.26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2). This can be clearly discerned from the commencing words of S.26 itself, they are: "Every award under this part shall be in writing signed by the Judge." What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with S.18 and ending with S.28-A of the Act. There can be no doubt that all the three heads specified in the three sub-sections in S.23 are the sums to be "awarded by the Court." Hence the words "every award under this part" cannot be treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of S.23."

In the result, therefore, the claimants will be entitled to get interest at the same rate and in the manner as laid down in **Sunder’s case (supra).**

13. In the result, the appeal filed by the Appellant is partly allowed. The claim granted by the Reference Court is reduced by 30% and thereafter the solatium and the interest at the rate of 12% per annum under Section 23(1A) of the said Act will have to be calculated. The award is accordingly modified. The cross objections filed by the claimants however are rejected.

14. Part of the amount has been paid to the claimants. However, remaining amount has been deposited in the Court. After the calculations are made, if it is found that any amount is due and payable to the claimants after taking into consideration the interest as envisaged, the same will have to be calculated and paid to the claimants. The balance amount, if any, will have to be returned to the appellant.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)